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FEDERAL GUIDELINES: INDUSTRIAL COST RECOVERY SYSTEMS, MUNICIPAL WASTEWATER TREATMENT WORKS CONSTRUCTION GRANTS PROGRAM

ENVIRONMENTAL PROTECTION AGENCY

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Section 204(b)(1)(B) of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) requires that industrial users of the Municipal Wastewater Treatment Works make payments for the portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes.

These guidelines are published to establish general minimum guidance and to inform industrial users, grantees, Regional Administrator, and the public concerning industrial cost recovery. The purpose of the guidelines is to increase understanding, assist preparation, simplify evaluation, and accelerate approval, implementation and maintenance of industrial cost recovery systems.

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MUNICIPAL WASTEWATER TREATMENT WORKS CONSTRUCTION GRANTS PROGRAM

FEBRUARY 1976

UNITED STATES
ENVIRONMENTAL PROTECTON AGENCY
WASHINGTON, D.C. 20460

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FEDERAL GUIDELINES

INDUSTRIAL COST RECOVERY SYSTEMS

Municipal Construction Division
Office of Water Program Operations
Environmental Protection Agency
Washington, D. C. 20460

February 1976

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FOREWORD

Section 204(b)(1)(B) of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) requires that industrial users of the treatment works make payments for that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes.

The congressional intent of this provision is that "it is inappropriate in a large Federal grant program providing a high percentage of construction funds to subsidize industrial users from funds provided by taxpayers at large" (legislative history).

This provision was implemented in the Code of Federal Regulations at 40 CFR Part 35, Subpart E, promulgated by the Environmental Protection Agency on February 11, 1974. Specifically, 40 CFR 35.928 and 35.935-13 state the industrial cost recovery system shall be prepared by the grantee, approved by the Regional Administrator, and implemented and maintained by the grantee in accordance with those regulations.

These guidelines are published to establish general minimum guidance and to inform industrial users, grantees, Regional Administrators, and the public concerning industrial cost recovery. The purpose of the guidelines is to increase understanding, assist preparation, simplify evaluation, and accelerate approval, implementation and maintenance of industrial cost recovery systems.

Andrew W. Breidenbach
Assistant Administrator
for Water and Hazardous Materials (WH-556)

1. INTRODUCTION

On October 18, 1972, the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) (the "Act") were enacted, extending the construction grants program and imposing new requirements on grant applicants. Section 204(b)(1)(B) of the Act prohibits the Environmental Protection Agency from approving a construction grant after March 1, 1973, unless the grant applicant has made provision for repayment by the industrial users of the treatment works, of that portion of the Federal grant which is allocable to the construction of facilities for treatment of wastes from those users.

Pursuant to the mentioned above legislation, rules and regulations covering industrial cost recovery (ICR) were codified in 40 CFR Part 35 and are referenced in these Guidelines and in Appendices A and B. It should be noted that the appendices are part of these guidelines and must be followed to the same extent as these guidelines.

2. PURPOSE AND SCOPE

These Guidelines and Appendices are intended to implement the industrial cost recovery regulations and to assist State and local officials and their representatives in the establishment of ICR systems which conform to the statute and EPA regulations. Guidance is provided on only the minimum Federal requirements. The resolution of other issues and the selection of alternative methods of meeting the ICR requirements have been left to the discretion of grantees.

The examples in Section 9 of these Guidelines should not be considered as inflexible or complete solutions for all municipalities seeking Federal grants. In particular, it should be recognized that the numerical figures in the examples are to be regarded as hypothetical.

3. GENERAL REQUIREMENTS FOR STEP 2 AND STEP 3 GRANT APPLICANTIONS

Applicants for Step 2 (preparation of construction drawings and specifications) and Step 3 (fabrication and building of a treatment works) grants must furnish letters of intent from prospective industrial users pursuant to 40 CFR 35.925-12. All Step 2 and Step 3 grants will be made on the condition that the grantee will comply with Federal ICR requirements unless the project will not initially serve industrial users (see Section 8).

4. STEP 3 GRANTS REQUIRED DOCUMENTATION FOR APPROVAL OF PROPOSED ICR SYSTEMS

A. Prior to requesting payment of more than fifty percent of the Step 3 grant, the grantee must furnish evidence to the Regional Administrator which demonstrates that it has made timely progress in development of an approvable ICR system. Such evidence shall include, but is not limited to, the following:

(1) The identity of grantee personnel, consultants, and grantee's legal counsel, whose responsibility it is to develop the industrial cost recovery system.

(2) A detailed schedule for completion of all significant portions of the ICR system (e.g., ordinances, identification of industrial users, etc.).

B. Prior to requesting payment of more than 80 percent of the Step 3 grant, or the event or schedule determined by the Regional Administrator to be applicable as described below, the grantee shall submit the following additional documentation:

(1) A completed statement in the form shown in Appendix A, which describes pertinent features of the ICR system;

(2) A resolution passed by the grantee or a written agreement executed by the grantee's representative who is authorized to execute the grant documents that it will properly and lawfully implement all the provisions of its ICR system;

(3) An opinion of the grantee's legal counsel, in the form shown in Appendix B, that the grantee's ICR system meets the requirements of Section 204(b) of the statute and applicable EPA regulations, and is in conformance with the general principles set forth in these Guidelines.

Generally, the requirement for submission of an ICR system at the 80 percent payment level of a Step 3 grant is appropriate when the treatment works to be constructed under the grant consists of a single treatment facility which will be operable when construction is completed. The two most frequent cases where the operation of a treatment works or operation of elements of a treatment works does not coincide with complete payment of the Step 3 grant are: the segmented project -- a project is segmented by the grantee and several Step 3 grants are necessary to complete construction

of the treatment works before it can be placed in operation; and the multiple facility project -- a project in which the treatment facilities or elements will be constructed and placed in operation by the grantee at different times and before the completion of all payments under the Step 3 grant.

In projects where segmenting of an operable treatment works has occurred, payment of more than 80 percent of the total of all Step 3 segments is not permitted unless the ICR system proposed by the grantee is approved by the Regional Administrator.

In projects where an element or elements of the treatment works have been completely constructed and placed in operation by the grantee, additional payment on a Step 3 grant is not permitted unless the ICR system (or that portion of the ICR system associated with the operating elements of the treatment works) proposed by the grantee is approved by the Regional Administrator.

In approving an ICR system, the Regional Administrator may require additional documentation and assurances if he requires revisions to the grantee's proposed system, or otherwise deems it appropriate.

5. APPEAL PROCEDURE

The grantee's ICR system and plans must provide for an administrative appeal procedure by which individual industrial users will have an opportunity to be heard regarding the reasonableness of the allocations and ICR assessments imposed upon them. It must also provide a method whereby others affected by the ICR system may obtain local review of the grantee's administration of the ICR system.

6. COMPUTATION OF ICR PAYMENTS

It is the grantee's responsibility to insure that the proper amount of Federal funds are recovered from industrial users and that each industrial user is treated fairly and consistently and assessed ICR payments in accordance with applicable law and generally accepted accounting principles.

ICR payments must be in proportion to those industrial wastewater characteristics which influence the cost of construction of the treatment works. These characteristics may include strength, volume, and delivery flow rate characteristics.

The following must be taken into consideration relative to the computation of the individual industrial user's ICR payment:

A. If an industrial user's maximum flow (hourly, daily, monthly, seasonally, etc.) contributes to the cost of construction of a treatment works, it should be the basis for that user's ICR payment. No credit shall be given to the industrial user for the time period when the user is not operating and not discharging wastewater.

B. Industrial users often discharge uncontaminated cooling waters into municipal treatment facilities. Such cooling water is considered process waste and must be included in the ICR computation.

C. Wastewater collection and treatment facilities are normally designed with unreserved excess capacity for expanded future use. The cost of building such unreserved excess capacity into a facility need not be recovered from existing users under these Guidelines.

D. Industrial cost recovery must be based on Step 3 construction and administrative costs, plus related Step 1 and Step 2 costs. Step 1 or Step 2 grant costs which do not result in actual Step 3 construction are not allocable to individual industrial users, and consequently need not be recovered.

E. Industrial users discharging pretreated process wastes into the municipal treatment facilities must pay industrial cost recovery based on the characteristics of the pretreated process wastes.

Those industrial wastewater characteristics included in the ICR system shall be monitored as required under Section 11 of these Guidelines.

7. RESERVED CAPACITY

Grantees may permit industrial users to reserve capacity in the treatment works (including used and unused capacity). Such capacity reserved through formal, written agreement is subject to industrial cost recovery as set forth below.

In such cases, the industrial user shall be required to pay the full ICR allocable to the capacity reserved. In the event that the industrial user exceeds its reserved capacity, it shall be required to pay ICR calculated on the full reserved capacity plus additional ICR for use above the limits of the reserved capacity or any element thereof.

In the event the treatment works are expanded in the future with PL 92-500 grant assistance, an industrial user who has executed a reserved capacity agreement and has made ICR payments based upon full reserved capacity will not incur additional ICR charges associated with the cost of expansion until the industrial user's actual use of the treatment works exceeds its reserved capacity.

Industrial users with reserved capacity contracts will, of course, be required to pay any additional ICR charges associated with the cost of upgrading a treatment works.

8. EXCLUSIONS FROM APPLICATION OF ICR SYSTEMS

A. ICR is not required for the following grant costs:

(1) Infiltration/Inflow correction or treatment;

(2) Correction of combined sewer overflows and collection or treatment of stormwaters;

(3) Grants for projects which will not initially serve industrial users. In such cases, the grantee must provide evidence that industrial users will not be initially served and must agree to a special condition to the grant agreement or grant amendment which will provide that the grantee will submit for approval by the Regional Administrator an ICR system in full compliance with EPA requirements, and that the system will be placed in operation at the time the first industrial user introduces industrial wastes into the grant-assisted facilities.

B. Certain industrial users may be excluded, at the grantee's option, from the application of the industrial cost recovery system if they fall within the following categories:

(1) Industrial users (as defined in 40 CFR 35.905-8(a), (b), (c), (d) and (e)) which discharge only non-process, segregated domestic wastes, or wastes from sanitary conveniences (for example, the so called "dry" industries) which are not significant industrial users under the Regulations (40 CFR 35.925-12);

(2) Industrial users that have reserved a portion of an existing treatment works under contract or agreement existing as of March 1, 1973, and who have paid a reasonable portion of the capital costs associated with that reserved capacity as determined by the Regional Administrator. This exemption applies only to grants for treatment works

expansions and only then if the industrial user has not exceeded his reserved capacity and will not require a portion of the expanded capacity. Any capacity reserved after March 1, 1973 is subject to ICR in accordance with the regulations.

9. INDUSTRIAL COST RECOVERY EXAMPLES

A. Construction of a New Wastewater Treatment Plant

The first step in developing an ICR system is to determine the share of capital construction costs of each component of the treatment works in relation to the principal parameters -- volume of flow, (Q), biochemical oxygen demand (BOD), suspended solids (SS), and any other design parameter which influences the cost of construction. General agreement regarding cost allocation can be easily obtained for some plant components; for example, costs associated with raw wastewater pumping are almost wholly a function of flow. The cost of such pumping equipment would, therefore, be assigned to the flow parameter (Q). Allocation of costs for other plant components is not so obvious and less precise methods of estimating must be employed. The allocations made in Table 1 are for illustrative purposes only and should not be construed as definitive for all types of treatment.

Costs associated with some of the components in Table 1 are not allocated across Q, BOD, and SS because these particular cost items (for example, control building or design costs) are not clearly linked to the wastewater treatment parameters under consideration. Instead a weighted average allocation may be made based on the costs attributed to those other components which are allocable.

It should be noted that any Step 1, 2 or 3 grant cost associated with infiltration/inflow correction or treatment of stormwater is not allocable to industrial users, and should be deducted from total costs of construction for the treatment works prior to calculating industrial cost recovery payments. In Table 1, for example, Step 2 and Step 3 costs were reduced by the ratio of the volume of nonexcessive infiltration/inflow (100,000 gal/day from Table 2) to the total volume (1,900,000 gal/day). Since I/I contributes only to the volume (Q) parameter, only the cost of facilities for that parameter was affected by the reduction. Step 1 costs were reduced by the costs incurred in removing excessive I/I from the system. In the event the Step 1 grant or Step 2 grant had covered more than one Step 3 grant, a deduction from total Step 1 and total Step 2 costs would also be appropriate to reflect the amount of such costs allocable to other Step 3 grants.

The percentage cost allocations shown in Table 1 should not be considered mandatory nor should they be considered uniformly applicable to all locations. They are presented to illustrate a reasonable approach to carrying out this cost allocation analysis and serve only as the basis for the examples. Grantees may allocate costs associated with flow, BOD, suspended solids, etc., to the treatment facility as a whole, without resorting to the component-by-component analysis shown in Table 1.

Since it is often impractical to develop a monitoring program to measure wasteload discharges from each minor industrial user (See Section 11) such industries may be initially assessed cost recovery payments on the basis of estimated discharges. In such cases, a flat rate may be charged each industry provided that the grantee has documented that it would be administratively impractical to monitor each of the industries separately, and that all such industries discharge a waste that is compatible with the municipal treatment process.

Table 2 lists the flows and strength of sewage from a sample community. The Federal grant allocable to the parameters of flow, BOD, and suspended solids, based on the costs given in Table 1, are:

Flow = $526.83/1,000 gallons/day

BOD = $75.75/lbs/day

Suspended Solids = $26.13/lbs/day

The calculations in the example were based on average daily flows and do not include flows attributable to nonexcessive infiltration/inflow which are not subject to ICR. (Guidelines, Section 8). Thus, although the treatment plant's design capacity is 1,900,000 gal/day, an adjusted capacity (total capacity less infiltration/inflow) of 1,800,000 gal/day was utilized in calculating ICR allocations to industrial users.

TABLE 1

Component	Total Cost	Q %*	Q $	BOD %*	BOD $	SS %*	SS $
Pump Station	$150,000	100	$150,000	0	$ 0	0	0
Grit Chamber	45,000	100	45,000	0	0	0	0
Primary Clarifier	325,000	100	325,000	0	0	0	0
Aeration Basin	400,000	40	160,000	60	240,000	0	0
Secondary Clarifier	325,000	100	325,000	0	0	0	0
Chlorine Contact	50,000	100	50,000	0	0	0	0
Flow Measurement	30,000	100	30,000	0	0	0	0
Sludge Digester	250,000	0	0	50	125,000	50	125,000
Sludge Dewatering	80,000	0	0	50	40,000	50	40,000
	1,655,000	64	1,085,000	25	405,000	11	165,000
Control Building	150,000	64	96,000	25	37,500	11	16,500
Step 3 Admin. Costs	50,000	64	32,000	25	12,500	11	5,500
	1,855,000		1,213,000		455,000		187,000
Deduct. for Non-Excess. I/I (1/19 of Q, See Table 2)	- 63,800		- 63,800		- 0		- 0
Total Step 3 Cost for ICR Purposes	1,791,200		1,149,200		455,000		187,0(
Step 1 Costs	50,000	64	32,000	25	12,500	11	5,500
Less Sewer Rehab. Costs	- 10,000		- 10,000		0		0
Total Step 1 Costs for ICR Purposes	40,000		22,000		12,500		5,500
Step 2 Costs	150,000	64	96,000	25	37,500	11	16,500
Less Deduct. for I/I (1/19)	- 2,800		- 2,800		0		0
Total Step 2 Costs for ICR Purposes	147,200		93,200		37,500		16,500
Total of All Grants (1-3) for ICR Purposes	1,978,400		1,264,400		505,000		209,000
Federal Grant	1,483,800		948,300		378,750		156,750

*Cost allocations for individual plant components are not definitive for all types of treatment, and may be varied as necessary

Table 2

Average Daily Raw Wastewater Flows and Strengths in Sample Community

Type of Account	No. of Accounts	Q gal/day	Q % of Total	BOD lb/day	BOD % of Total	SS lb/day	SS % of Total
Industrial*	8	450,000	25	2,300	46	2,800	47
Commercial**	10	50,000	3	150	3	200	3
Residential	3,000	1,000,000	55	1,700	34	2,000	33
Sub-Total		1,500,000		4,150		5,000	
Unreserved Excess Capacity		+ 400,000	--	850	----	1,000	----
Total Design Capacity		1,900,000	--	0	----	0	----
Less Nonexcessive I/I		- 100,000					
Design Capacity for ICR Purposes		1,800,000	100	5,000	100	6,000	100

Capital Costs Per Unit of Treatment

Flow: Federal grant allocable to flow = $948.300 (from Table 1)

Design Flow (1,900,000-100,000) = 1,800,000 gal/day

Cost per 1000 gal. = $\frac{\$948,300}{1,800}$ = $526.83

BOD: Federal grant allocable to BOD = $378,750 (from Table 1)

Design BOD = 5,000 lb/day

Cost per lb. of BOD = $\frac{\$378,750}{5,000}$ = 75.75

SS: Federal grant allocable to SS = $156,750 (from Table 1)

Design SS = 6,000 lb/day

Cost per lb of SS = $\frac{\$156,750}{6,000}$ = $26.13

*Industries are defined as any establishment listed in Divisions A, B, D, E and I of the SIC Manual.

**Some commercial establishments are included in Division I, and as such, have an ICR obligation.

TABLE 3

Daily Industrial Discharge in Sample Community

Industry	No. of Employees	Type of Waste	Q(gal/day)	#BOD/day	#SS/day
1	200	Process waste	150,000	600	1,000
2	200	Process waste & reserved capacity	200,000	1,200	1,000
3	300	Pretreated process waste	70,000	350	590
4	500	Sanitary waste	15,000	30	30
5-8	Varies	Process waste	15,000	120	180
			450,000	2,300	2,800

Table 3 lists the community's eight industrial accounts. The procedures followed in calculating each industry's cost recovery obligation are as follows.

Industry No. 1 Q = 150,000 gal/day

BOD = 600#/day

SS = 1,000 #/day

Assumptions: Process wastes discharged to municipal sewerage system.

Total Cost Recovery Payment = 150,000 gal/day ($526.83/1,000 gal/day)

+ 600#/day ($75.75/#BOD/day)

+ 1,000#/day ($26.13/#SS/day)

= $79,024.50 + $45,450.00 + $26,130.00

= $150,604.50

Annual payment = $\frac{\$150,604.50}{30}$ = $5,020.15/year

(Based on a 30 year useful life)

Industry No. 2 Initial Q = 100,000 gal/day

Ultimate Q = 200,000 gal/day

Initial BOD = 600#/day; ultimate BOD = 1,200#/day

Initial SS = 500#/day; ultimate SS = 1,000#/day

Assumptions: This industry plans on doubling its output sometime during the useful life of the facility, and has entered a binding agreement reserving additional treatment plant capacity for that purpose.

Total Cost Recovery = 200,000 gal/day ($526.83/1,000 gal/day)

+ 1,200 #BOD/day ($75.75/#BOD/day)

+ 1,000 #SS/day ($26.13/#SS/day)

= $105,366.00 + $90,900.00 + $26,130.00

= $222,396.00

Annual payment = $\frac{\$222,396.00}{30}$ = $7,413.20/year

(Based on a 30 year useful life)

Industry No. 3 Q = 70,000/gal/day

BOD = 350 #/day Volume and strength of pretreated waste

SS = 590#/day

Assumptions: Process wastes discharged to municipal sewerage system following pretreatment.

Total Cost Recovery = 70,000 gal/day ($526.83/1,000 gal/day)

+ 350 #BOD/day ($75.75/#BOD/day)

+ 590 #SS/day ($26.13/#SS/day)

= $36,878.10 + $26,512.50 + $15,416.70

= $78,807.30

Annual payment = $\frac{\$78,807.30}{30}$ = $2,626.91/year

(Based on a 30 year useful life)

Industry No. 4 Q = 15,000 gal/day

BOD = 30 #/day

SS = 30 #/day

Assumptions: The only type of waste discharged by this industry originates in sanitary conveniences. In the event the grantee exercises the option to exclude this and other "dry" industries (Guidelines Section 8) no cost recovery would be required. Otherwise the ICR would be calculated in the same manner as for other industries in this example.

Industries 5-8 Total Q = 15,000 gal/day

Total BOD = 120 #/day

Total SS = 180 #/day

Assumptions: The process wastes discharged by the four industries in this group are not large enough to justify constant monitoring. The grantee will have the choice of either calculating cost recovery payments from these industries on the same basis as for Industries 1 through 4 or determining the cost recovery payments required from these industries as a group, and dividing the resultant liability equally among the four. Cost recovery calculations for the latter case would be made as follows:

Total Cost Recovery Payment = 15,000 gal/day ($526.83/1,000 gal/day)

= 120 #BOD/day ($75.75/#BOD/day)

= 180 #SS/day ($26.83/#SS/day)

Total Cost Recovery Payment = $7,902.45 + $9,090.00 + $4,703.40

= $21,695.85

$$\text{Cost Recovered from each industry} = \frac{\$21,695.85}{4} = \$5,423.96$$

$$\text{Annual payment from each industry} = \frac{\$5,423.96}{30} = \$180.80/\text{year}$$

(Based on a 30 year useful life)

It should be noted that industrial cost recovery payments are required from industrial users which pretreat their wastes (Industry No. 3 in the example), but the amount of such payments will be determined by the wastewater characteristics following the pretreatment process.

In the event the grantee exercises its option to exclude "dry" industries from industrial cost recovery (Guidelines, Section 8), the grantee should also deduct the estimated sanitary wastewater from the total discharge of industrial users which discharge a combination of process wastewater and wastewaters from sanitary conveniences, prior to computing the industrial cost recovery payments of such industrial users.

B. Expansion of an Existing Wastewater Treatment Plant

Capital costs for treatment plant expansion projects will be determined in the manner outlined in the preceeding example. Allocation of costs to industrial users will be based on the total expanded capacity of that facility. For example, if industrial users will utilize 50 percent of the total capacity of the treatment works as expanded, ICR payments adequate to recover 50 percent of the Federal grant will normally be required, unless any industrial users qualify for the exclusions from ICR described in Section 8 of these Guidelines.

C. Construction of Sanitary Sewers

Allocation of sewer construction costs to industrial users must be based on the design discharge from such users as a percentage of the design flow in the sewer. Industrial allocations may be based on (a) the total cost of the sewer without regard to the point of an industrial discharge, or (b) the cost of the portion of the sewer downstream from the industrial discharge.

10. NEW INDUSTRY

A "new" industry is one which connects to a treatment works after such treatment works has been put into service. ICR payments by a new industry shall begin on the date use is initiated and shall continue for the unexpired portion of the ICR period or until the industry ceases use of the facility, whichever occurs first (see Section 12). Total ICR recovered from a new industry shall be the Federal cost of the capacity used multiplied by the ratio of its period of use to the ICR period.

11. MONITORING

In developing the ICR system, the wastewater characteristics of each industrial user shall be determined. Normally this is done by monitoring. However, where monitoring is not feasible, wastewater characteristics may be estimated using historical records, data from similar industrial users, etc. After the ICR system is put into operation, major industrial users must be monitored on a regular basis, not less often than annually. Monitoring for minor industries may be done on a random basis. The grantee shall propose a definition of major and minor industry and a monitoring program for each which reflects its relative impact on the cost of construction of the treatment works (see Appendix A). Monitoring must be conducted during periods of normal discharge.

12. DISCONTINUANCE OF USE BY INDUSTRIAL USERS

If an industrial user discontinues use of the treatment works (including termination of any agreement for reserve capacity), its payment for industrial cost recovery will cease. There is no requirement for other industries presently using the treatment works to assume the portion of the ICR payment which is unrecovered due to the departure of an industrial user. Total ICR recovered from an industry which discontinues use during the ICR period shall be the Federal cost of the capacity used multiplied by the ratio of its period of use to the ICR period. A significant industry planning to discontinue its use of the treatment facility during the ICR period must make its intention known in the letter of intent required under 40 CFR 35.925-12. The grantee must consider the cost-effectiveness of providing capacity for that industry in its facility plan (Step 1).

13. LUMP SUM INDUSTRIAL COST RECOVERY PAYMENTS

An industrial user may wish to fulfill its industrial cost recovery obligation by making a lump sum payment for its entire share of the cost of construction of the treatment works. Such payments may be accepted by the grantee and either processed as a normal ICR payment or set aside in a separate account to be drawn on annually for the remainder of the industrial cost recovery period. Lump sum payments will not relieve an industrial user from the obligation of making additional future payments should its wastewater flow or load increase. Discounts from the total industrial cost recovery requirement will not be given to industrial users making advanced ICR payments. Any interest earned by the grantee on ICR payments set aside will be recoverable in the same manner as if the ICR payments were made as due (40 CFR 35.928-2(a)).

14. STATE AGENCY REVIEWS

Federal review functions including review of the original ICR system, approval of the use of retained funds, and the conduct of necessary audits can be delegated to State water pollution control agencies.

15. CONFLICT BETWEEN LOCAL LAWS OR AGREEMENTS AND FEDERAL ICR REQUIREMENTS

Section 204(b)(1)(B) of the Act supersedes and nullifies any and all State or local laws and ordinances and orders in conflict therewith. Any agreement between the grantee and any industry, or between the grantee and any other political jurisdiction, or other party, which purports to relieve any industry from payment of the Federal share of the grant, or which purports to limit the power of a grantee to demand collection of the Federal share of the cost of construction from each industrial user will not be grounds to circumvent or avoid the requirements of Section 204(b)(1)(B), EPA regulations and these Guidelines. Prospective grantees shall promptly notify EPA of such laws or agreements and take all steps necessary to remedy the defect in their ability to fully comply with EPA requirements. Until such restrictions are completely removed, whether by court order or otherwise, the grantee shall be ineligible for Federal funding.

16. IMPLEMENTATION OF APPROVED ICR SYSTEMS

A. Notification of Implementation

In general, the industrial cost recovery period will commence when Step 3 construction is complete. However, at the time any element of a treatment works funded by the Federal construction grant becomes operable, it must be placed in the ICR system and the ICR period will begin from the date of beneficial use by the first industrial user.

Immediately after the ICR period begins, the grantee will establish the accounting period for the ICR system, which may be based on the grantee's fiscal year or any other appropriate annual period and need not coincide with the ICR period for any particular treatment works. Adjustment for a particular treatment works or individual industrial users should be made where appropriate and necessary to maintain administrative integrity and simplicity.

Not later than 30 days after the ICR period begins, the grantee will establish the accounting period for the ICR system and will notify the Regional Administrator, in writing, of the date of this implementation of the ICR system. The first payment to the grantee by the industrial users shall be made not later than one year after the beginning of the ICR period.

Although the ICR assessment imposed on industrial users is based upon an annual allocation of the Federal costs of construction of the treatment works, the grantee may require or accept partial payments of an industrial user's ICR assessment on a monthly, quarterly or semi-annual basis. The grantee shall not provide industrial user's with an interest type credit for such periodic payments and the payments must be associated with the assessment of ICR charges for the year in which they are paid.

B. Deposit of Recovered Funds

All funds recovered during the annual accounting period (with the exception of the discretionary portion of the grantee's share) shall be deposited in interest-bearing accounts which are fully collateralized by obligations of the U.S. Government or by obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

Uncollected ICR charges which mature into bad debts as a result of bankruptcy of any industrial users should be identified, but are not to be recovered from other industrial users or other sources, and the Federal share of such charges need not be paid to the U.S. Government as long as they remain uncollected. The funds recovered in ICR payments are not to be decreased by the grantee's costs of collection and administration of the ICR, since those expenses should be paid as part of the operation and maintenance expenses associated with the treatment works. EPA reserves the right to withhold future grants or grant payments from any grantee who is not operating its ICR system in accordance with EPA regulations or enforcing its system to recover ICR payments.

C. Annual Payment to EPA

At no less than annual intervals, no later than four (4) months after the end of the grantee's annual accounting period, the grantee shall submit to the Regional Administrator's Financial Management Office a check for the annual ICR payment to the Federal Government, made payable to the Environmental Protection Agency. This payment must include any interest earned on the Federal portion of recovered funds during the preceeding annual accounting period.

D. Use of Retained Funds

(1) The grantee must obtain the written approval of the Regional Administrator (or the State agency when it is certified by the EPA to do so) prior to committing any of the funds retained for the construction of treatment works, pursuant to 40 CFR 35.928-2. Since retained funds belong to the grantee, approval of their use is not a separate grant

and need not be applied for through the State priority system. Only the approval of the Regional Administrator is necessary and it will be based upon a determination that the proposed use of the funds would be for costs for expansion and reconstruction of treatment works within the applicant's jurisdiction which would be eligible for a grant.

In order to make such a determination, the Regional Administrator will require the following:

(a) a preliminary engineering report sufficiently detailed so as to permit a determination of eligible costs;

(b) an estimate of eligible costs (see 40 CFR 35.940). The grantee should not contract for, or proceed with the expenditure of such funds until the Regional Administrator's approval has been obtained. No more than actual costs may be withdrawn.

(2) Discretionary funds retained by the grantee (20 percent of the retained funds (See 40 CFR 35.928-2(b)) may be used for any purpose except for construction of industrial pretreatment facilities or rebates to industrial user(s) for costs incurred by such users in complying with Federal user charge or industrial cost recovery requirements.

E. Reduction of Allowable Costs for Future Grants

Allowable costs for future grants will be reduced by an amount equal to the unexpended balance of the amounts retained by the grantee for future expansion and reconstruction together with interest earned thereon (40 CFR 35.925-17).

F. Audits

(1) It will be the practice of EPA to make a preliminary audit of the grantee's industrial cost recovery system at the time of, and as an extension to, the final construction audit. The scope of this preliminary audit will generally encompass:

(a) a verification that the grantee's approved industrial cost recovery system as described in its submission pursuant to paragraph 4B(1) and (3) of these Guidelines fully complies with the Act, EPA regulations concerning ICR and these Guidelines;

(b) a determination that the grantee has an adequate accounting system and other administrative procedures and systems, including waste monitoring systems where these are required to effectively implement the approved industrial cost recovery system.

Where deficiencies are identified, EPA will so advise the grantee and recommend appropriate corrections. The purpose of these preliminary audits is to identify deficiencies and seek their correction. When the final construction audit occurs after the first full year of operation of the industrial cost recovery system, or in some cases, after several months of operation, the preliminary audit will take the form of the regular audit described below.

(2) EPA will schedule audits of industrial cost recovery systems when determined to be necessary and requested by the Regional Administrator. Unrequested, random audits will also be made to assess general performance of grantees and identify potential problem areas. These audits will normally encompass the following:

(a) a determination of whether allocable industrial costs have been properly computed, assessed and collected pursuant to the approved industrial cost recovery system or approved revisions thereto:

(b) a determination of whether collected amounts have been properly accounted for and have been deposited in accounts or invested in obligations prescribed by 40 CFR 35.928-2, and a determination of whether the interest earned on collected amounts has been fully and properly accrued;

(c) a determination of whether the grantee has made all annual submission and payments to EPA and whether these have been complete and correct;

(d) a determination of the effectiveness of actions being taken by the grantee to collect proper amounts, if any, which have not been paid by industrial users;

(e) a determination of the adequacy of wastewater monitoring and reporting by the grantee and/or the industrial users, to the extent that such monitoring is required by the approved industrial cost recovery system or approved revisions thereto; and

(f) a determination of whether any and all uses of retained funds have been approved by the Regional Administrator (or the State agency when it has been certified to grant such approval), and have been actually applied to eligible project costs.

If there is any reason to suspect non-compliance with the approved ICR system, Federal laws, EPA regulations, or these Guidelines, an audit of the grantee's system will be made. Examples of non-compliance are: inequitable proration of the ICR charges among industrial users, failure to charge all ICR amounts, failure to account for and invest collected and retained amounts, failure to pay the share due the Federal Government, and use of the grantee's 80 percent portion of retained amounts without the prior approval of the Regional Administrator.

G. Record Keeping

40 CFR 935.13(d) requires that the grantee maintain, for the duration of the cost recovery period, such records as are necessary to document compliance with the grant requirements. These will generally include the following:

(1) documentation of the final grant amount;

(2) the originally approved industrial cost recovery system and all documentation related thereto;

(3) all subsequent revisions to the industrial cost recovery system and all documentation related thereto;

(4) a list of contributing industries and their wastewater loads to the system;

(5) information on the total wastewater loading of the system;

(6) the grantee's notification to EPA of initiation of operation of the industrial cost recovery system;

(7) all approval(s) of the use of retained funds;

(8) the record of the grantee's annual payments to EPA and documentation related thereto;

(9) records relating to retention and investment of those funds set aside for future expansion and reconstruction.

These materials are necessary for all audits and must be made available to representatives of EPA or the State upon request.

H. Penalties for Non-Compliance

Compliance with the approved system of industrial cost recovery is a fundamental condition of the grant. If the grantee fails to implement and maintain the approved system, the Regional Administrator will take appropriate action, which may include (1) withholding of grant funds for current projects, (2) determination of non-responsibility for purposes of future grants, and (3) seeking a judicial remedy such as a suit for recovery of funds already granted, criminal prosecution, or other appropriate action.

APPENDIX A

DESCRIPTION OF INDUSTRIAL COST RECOVERY SYSTEM

EPA Grant Identification Number:_____

Name of Grantee:_____

Grantee's Legal Address:_____

Name of Facility (if applicable):_____

Brief Description of the Project:_____

_____

_____

(a)	Total Design Capacity:	Total Initial Industrial Contribution:
	Flow = _____	Flow = _____
	BOD = _____	BOD = _____
	SS = _____	SS = _____
	Other (Itemize) =	Other (Itemize) =
	_____	_____
	_____	_____

(b) Total cost of construction of the treatment works based upon the best available data or estimates including Step 1 and Step 2 costs, and the total amount of construction grants to be received based upon such estimates.

Total Cost $_____

as of (date)_____

Total grant funds_____

as of (date)_____

(c) Furnish industrial user cost allocations similar to Table 1 and Table 2 of Section 9 of these Guidelines (40 CFR 35.928-1(d), 40 CFR 35.925-12).

(d) Industrial Cost Recovery Period (40 CFR 35.905-7): _____Years
Initial date: _____
Useful life: _____Years (if different from ICR period)
Did the grant fund the construction of elements of the total treatment works which will be placed in operation at different times? _____yes__no
If "yes", attach a listing of the industrial cost recovery period for each element so constructed and placed in operation.

(e) Cite the ordinances, authorities or contractual agreements which establish the basis for the ICR system (40 CFR 35.928).

_____

_____

(f) Describe the method used for defining industrial users for the purpose of allocating costs (40 CFR 35.905-8).

_____

_____

(g) Does the proposed ICR system make provision for an appeal procedure in accordance with Section 5 of these Guidelines? _____yes_____no
Briefly describe the appeal procedure and cite legal authorities.

_____

_____

(h) Does the proposed ICR system make provision for adding new industrial users to the system in accordance with Section 10 of these Guidelines?
_____yes _____no

(i) Were any grant costs excluded from the ICR system? _____yes _____no
If "yes", attach a description of the excluded portion and give the basis for such exclusion (Guidelines Section 8).

(j) Were any industrial users excluded from the industrial cost recovery system? _____yes _____no
If "yes", attach a list of the industrial users so excluded and the basis for each such exclusion (40 CFR 35.905-8(e), Guidelines Section 8).

(k) Has any portion of the treatment works' reserve capacity been set aside for use by specific industrial users through formal written agreements? _____yes _____no
Informal agreements? _____yes _____no
If "yes", attach a list of such agreements (formal and informal) and the capacity reserved for each industrial user (40 CFR 35.928-1(g), Guidelines Section 7).

(l) Will industrial users be required to begin paying ICR within one year of the date of initiation of service of the grant-assisted facility (40 CFR 35.928-1(c), Guidelines Section 16)? _____yes _____no
If "no", attach explanation.

(m) Will the proposed ICR system affect any ICR system developed under a previous grant? _____yes _____no
If "yes", attach explanation.

(n) Describe the method to be used in classifying industries into major and minor categories for monitoring purposes. Include, in the description, the nature and level of monitoring to be required and the manner in which monitoring will be conducted and reported. Describe the method by which an industrial users ICR payment will be adjusted with changes in wastewater characteristics (40 CFR 35.928-1(e), Guidelines Section 11).

_____

_____

(o) Describe the method by which an industrial user's ICR payment be adjusted if the treatment works is upgraded or expanded in the future (40 CFR 35.928-1(f)).

_____

_____

(p) Describe proposed procedures for funds management and investment.

_____

_____

Prepared by:

Name (Typed) _____ (Signature)

Title (Title) _____ (Date)

Telephone Number _____

APPENDIX B
OPINION OF LEGAL COUNSEL

I, _____, an Attorney-at-Law, authorized to practice law in the State of _____, and employed as legal counsel for _____(the grantee) have reviewed the industrial cost recovery (ICR) plans and system proposed for implementation by the grantee, which has obtained a Federal grant under Environmental Protection Agency (EPA) Grant Identification Number _____pursuant to Title II of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) (the "Act"). A brief description of the proposed ICR system and plans, is attached hereto (Appendix A). I have reviewed Appendix A and its supporting documents, and assuming that the engineering basis for the cost allocations is correct, I am of the opinion that the grantee's ICR system as described therein will meet the requirements of Section 204(b)(1)(B) of the Act, will comply with EPA's rules and regulations, and will conform with EPA's ICR Guidelines. Furthermore, it is my opinion that the grantee has the legal authority to implement the ICR system and plans, and to fully enforce its provisions requiring ICR payments by industrial users.

Date:_____ Name:____(Typed)_____

Telephone:_____ _____(Signature)_____

Title:_(Typed)_____

*U.S. Government Printing Office: 1976-677-878/301 Region 8